

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Connie Titchenell

(b) County of Residence of First Listed Plaintiff Delaware County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Frank Schwartz, Esquire, LAMM RUBENSTONE LLC, 3600
Horizon Blvd., Suite 200, Trevese, PA 19053, (215)638-9330

DEFENDANTS

Apria Healthcare Group, Inc., Norman C. Payson and Daniele E. Greenleaf

County of Residence of First Listed Defendant Orange County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
FEDERAL TAX SUITS <input checked="" type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609				

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
FLSA of 1938 as amended, 29 U.S.C. Section 201, et seq.

Brief description of cause:
Failure to pay overtime wages

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

01/25/2011

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 315 Stratford Road, Glenolden, PA 19036

Address of Defendant: 26200 Enterprise Court, Lake Forest, CA 92630

Place of Accident, Incident or Transaction: 678 Elmwood Avenue, Sharon Hill, PA 19079

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☐ UNKNOWN

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes ☐ No ☒

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes ☐ No ☒

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes ☐ No ☒

4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?

Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts

2. ☐ FELEA

3. ☐ Jones Act-Personal Injury

4. ☐ Antitrust

5. ☐ Patent

6. ☐ Labor-Management Relations

7. ☐ Civil Rights

8. ☐ Habeas Corpus

9. ☐ Securities Act(s) Cases

10. ☐ Social Security Review Cases

11. ☒ All other Federal Question Cases

(Please specify)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts

2. ☐ Airplane Personal Injury

3. ☐ Assault, Defamation

4. ☐ Marine Personal Injury

5. ☐ Motor Vehicle Personal Injury

6. ☐ Other Personal Injury (Please specify)

7. ☐ Products Liability

8. ☐ Products Liability — Asbestos

9. ☐ All other Diversity Cases

(Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, _____, counsel of record do hereby certify:

☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

☐ Relief other than monetary damages is sought.

DATE: _____

Attorney-at-Law

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 1/25/2011

Frank Schwartz, Esquire

52729

Attorney-at-Law

Attorney I.D.#

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

Connie Titchenell

v.

Apria Healthcare Group, Inc.,

Norman C. Payson and Daniele E. Greenleaf

CIVIL ACTION

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

<u>1/25/2011</u>	<u>Frank Schwartz, Esquire</u>	<u>Plaintiff</u>
Date	Attorney-at-law	Attorney for
215-638-9330	215-638-2867	fschwartz@lammrubenstone.com
<hr/> Telephone	<hr/> FAX Number	<hr/> E-Mail Address

APPENDIX G

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

Connie Titchenell

V.

Apria Healthcare Group, Inc.,
Norman C. Payson and Daniele E. Greenleaf

Civil Action

No: _____

DISCLOSURE STATEMENT FORM

Please check one box:

☐ UNKNOWN The nongovernmental corporate party, Apria Healthcare Group, Inc., in the above listed civil action does not have any parent corporation and publicly held corporation that owns 10% or more of its stock.

☐ UNKNOWN The nongovernmental corporate party, Apria Healthcare Group, Inc., in the above listed civil action has the following parent corporation(s) and publicly held corporation(s) that owns 10% or more of its stock:

1/25/2011

Date



Signature

Counsel for: Plaintiff, Connie Titchenell

Federal Rule of Civil Procedure 7.1 Disclosure Statement

(a) WHO MUST FILE; CONTENTS. A nongovernmental corporate party must file two copies of a disclosure statement that:

- (1) identifies any parent corporation and any publicly held corporation owning 10% or more of its stock; or
- (2) states that there is no such corporation.

(b) TIME TO FILE; SUPPLEMENTAL FILING. A party must:

- (1) file the disclosure statement with its first appearance, pleading, petition, motion, response, or other request addressed to the court; and
- (2) promptly file a supplemental statement if any required information changes.

forty (40) hours in each workweek without paying them time and one half of their regular rate of pay as required by the FLSA.

3. Pursuant to §216(b) of the FLSA Plaintiff seeks overtime compensation for “off the clock” work, liquidated damages, post judgment interest and attorney’s fees and costs from Defendants on her own behalf and on behalf of all other similarly situated employees of Apria Healthcare Group, Inc. (“Apria”).
4. Subsequent to the filing of this action Plaintiff may request this Court to authorize concurrent notice to all Apria employees similarly situated to Plaintiff who are or were employed during the Liability Period, informing them of the pendency of this action and their right, pursuant to §216(b) of the FLSA, to opt into this lawsuit.

PARTIES, JURISDICTION AND VENUE

5. Plaintiff, Connie Titchenell (“Ms. Titchenell”) is an adult citizen of the Commonwealth of Pennsylvania with residence located at 315 Stratford Road, Glenolden, Pennsylvania 19036. At all times material hereto, Ms. Titchenell was an employee of Apria.

6. Defendant, Apria, is a Delaware for profit corporation with a principal place of business located at 26200 Enterprise Court, Lake Forest, California 92630. At all times material hereto, Apria was a provider of home healthcare products and services, conducting business in all fifty states.

7. Defendant, Norman C. Payson (“Mr. Payson”) is, upon information and belief, an adult citizen of the State of California with a business address of 26200

Enterprise Court, Lake Forest, California 92630. At all times material hereto, Mr. Payson was the Chief Executive Officer (“CEO”) of Apria.

8. Defendant, Daniel E. Greenleaf (“Mr. Greenleaf”) is, upon information and belief, an adult citizen of the State of California with a business address of 26200 Enterprise Court, Lake Forest, California 92630. At all times material hereto, Mr. Greenleaf was the Chief Operating Officer (“COO”) of Apria.

9. This Court has original jurisdiction over plaintiff’s FLSA claim pursuant to 28 U.S.C. §1331 and 1337, and supplemental jurisdiction over plaintiff’s state law claims pursuant to 28 U.S.C. §1367.

10. Venue is proper in this District pursuant to 28 U.S.C. §1391(b)(2) and §1391(c) as substantial events giving rise to plaintiff’s claims occurred within this District and/or occurred while the corporate defendant resides within this District.

BACKGROUND FACTS

11. Ms. Titchenell was hired by Apria on or about May 6, 1996 to work as a receptionist at APRIA’s branch office located at 678 Elmwood Avenue, Sharon Hill, Pennsylvania 19079.

12. On or about May, 2007, Ms. Titchenell was promoted to the position of Customer Service Specialist. At all times material hereto, and in her capacity as a Customer Service Specialist Ms. Titchenell performed non-exempt duties.

13. On or about January 14, 2008, Ms. Titchenell received a Performance Appraisal which, *inter alia*, rated her as “meets expectations” with respect to productivity. A true copy of said Performance Appraisal is attached hereto as Exhibit “A.”

14. On or about March, 2009, Ms. Titchenell's direct supervisor, Susan Dixs ("Ms. Dixs") and the branch manager, John Dorais ("Mr. Dorais") complained to Ms. Titchenell that she was not being productive enough in her position as Customer Service Specialist.

15. On or about March, 2009, and in direct response to the complaints of lack of productivity by Dixs and Dorais, Titchenell began working "off the clock" an additional ten to fifteen hours per week in order to service the number of customers demanded by Dixs and Dorais.

16. Ms. Titchenell's ten to fifteen extra hours work per week was "off the clock" because Apria had a company wide policy, pattern or practice of no overtime work unless approved by management, yet the only way that Ms. Titchenell could complete the amount of work demanded by management was to work extra hours. Accordingly, Ms. Titchenell would clock out at 5:00 P.M. but remain working at her desk until approximately 7:30 P.M.

17. Both Ms. Dixs and Mr. Dorais were fully aware that Ms. Titchenell was working off the clock as they would regularly observe her at work after hours and neither had approved any overtime pay for Ms. Titchenell.

18. Despite working ten to fifteen overtime hours per week, Ms. Titchenell was paid only for her forty hours of clocked time per week.

19. On or about July 12, 2010, Ms. Titchenell received a Performance Appraisal wherein Titchenell was rated as "needs improvement" with respect to Productivity/Quantity of Work. A true copy of this Performance Appraisal is attached hereto as Exhibit "B."

20. As a result of receiving the Performance Appraisal attached hereto as Exhibit "B," and with the full knowledge of Dorais and Dix, Ms. Titchenell continued to work approximately ten to fifteen hours per week "off the clock" in order to meet the productivity demands of Mr. Dorais.

21. On or about June 30, 2010, Ms. Titchenell suffered a work place injury which temporarily affected the quantity of work that she could perform per hour.

22. Despite knowing that Ms. Titchenell had suffered a work place injury which affected the amount of work she could perform, Ms. Dix continued to complain about Ms. Titchenell's lack of productivity. Accordingly, Ms. Titchenell continued to work off the clock in an attempt to satisfy the demands of Ms. Dix for increased productivity.

23. On or about September 22, 2010, Ms. Titchenell was asked to meet with Dorais and Dix. At this meeting Ms. Titchenell was terminated without ever receiving a letter of termination or any formal exit interview. At this meeting Ms. Titchenell was told that the reason for her termination was her lack of productivity.

**COUNT I - VIOLATION OF THE
FAIR LABOR STANDARDS ACT 29 U.S.C.A. §201 et. seq.**

Plaintiff v. Apria

24. Plaintiff hereby incorporates by reference each and every allegation set forth in paragraphs 1 through 23 above, as if fully set forth at length herein.

25. Apria is an employer within the meaning of §203(d) of the FLSA.

26. Ms. Titchenell is an employee within the meaning of §203(e)(1) of the FLSA.

27. Ms. Titchenell is a non exempt employee pursuant to §213 of the FLSA.

Accordingly, she is subject to §207(a)(1) of the FLSA which states:

No employer shall employ any of his employees... for a work week longer than forty hours, unless such employee receives compensation for his employment... at a rate not less than one and one half times the regular rate at which he is employed.

28. At the time of her termination plaintiff's regular rate of pay was \$15.30 per hour.

29. Apria's repeated demands that plaintiff work in excess of forty hours per week without receiving overtime pay evidences a willful violation of §207(a)(1) of the FLSA.

30. Section 211(c) of the FLSA requires all employers to keep accurate records of the wages and hours worked by each and every employee.

31. Upon information and belief, Apria's records do not accurately reflect the off the clock hours worked by Ms. Titchenell. Apria's failure to keep accurate records of hours worked is a willful violation of §211(c) of the FLSA.

WHEREFORE, plaintiff, Connie Titchenell, for herself and those similarly situated, hereby demands judgment in her favor and against defendant Apria Healthcare Group, Inc. for compensatory damages, liquidated damages, attorneys' fees and costs, punitive damages and such other further relief as this Court deems just and appropriate.

**COUNT II – VIOLATION OF THE PENNSYLVANIA
MINIMUM WAGE ACT 43 P.S. §333.101 et seq.**

Plaintiff v. Apria

32. Plaintiff hereby incorporates by reference each and every allegation set forth in paragraphs 1 through 31 above, as if fully set forth at length herein.

33. Apria is an employer as defined in §333.103(g) of Pennsylvania Minimum Wage Act of 1968, 43 P.S. §333.101 *et seq.*, (“MWA”).

34. Plaintiff is an employee as defined in §333.103(h) of the MWA.

35. Section 333.104(c) of the MWA provides that “overtime not less than one and one half times the employee’s regular rate...” shall be paid to all employees working in excess of forty hours per week.

36. Section 333.108 of the MWA requires that all employers keep a “true and accurate record of the hours worked by each employee and the wages paid to each employee... .”

37. As set forth above, Apria has willfully violated §333.104(c) of the MWA by failing to pay Ms. Titchenell overtime wages for hours worked in excess of forty hours per week.

38. As set forth above, Apria has willfully violated §333.108 of the MWA by failing to keep true and accurate records of the hours worked by Ms. Titchenell.

WHEREFORE, plaintiff, Connie Titchenell, for herself and those similarly situated, hereby demands judgment in her favor and against defendant Apria Healthcare Group, Inc. for compensatory damages, liquidated damages, attorneys’ fees and costs and such other further relief as this Court deems just and appropriate.

**III – VIOLATION OF PENNSYLVANIA’S WAGE
PAYMENT AND COLLECTION LAW 43 P.S. §260.1 *et seq.***

Plaintiff v. All Defendants

39. Plaintiff hereby incorporates by reference each and every allegation set forth in paragraphs 1 through 38 above, as if fully set forth at length herein.

40. Apria is an employer within the meaning of §260.2(a) of Pennsylvania’s Wage Payment and Collection Law, 43 P.S. §260.1 *et seq.*, (“WPCL”).

41. As an officer of Apria, defendant Payson is an employer within the meaning of the WPCL and can be found individually liable for any violation thereof.

42. As an officer of Apria, defendant Greenleaf is an employer within the meaning of the WPCL and can be found individually liable for any violation thereof.

43. Upon information and belief, Payson and Greenleaf, in their respective capacity as CEO and COO of Apria were instrumental in the formulation, implementation and/or continuation of Apria’s company-wide policy, pattern and practice with respect to the non-payment of overtime wages and the inaccurate record keeping of employees’ wages and hours as set forth above.

44. Upon information and belief Payson and Greenleaf have had certain minimum contacts with the Commonwealth of Pennsylvania in furtherance of their business interests within Pennsylvania.

45. Pursuant to §260.3 of the WPCL, over time wages must be paid to eligible employees in the next succeeding regular pay period.

46. Pursuant to §260.7 of the WPCL “no provision of this Act shall in anyway be contravened or set aside by private agreement.”

47. As set forth above, Apria's failure to pay overtime wages to plaintiff in each of her pay periods when overtime hours were worked is a willful violation of the WPCL.

48. As officers of Apria, defendants Payson and Greenleaf are individually liable for any and all willful violations of the WPCL.

49. Pursuant to §260.9 of the WPCL plaintiff is entitled to compensatory damages and recovery of reasonable attorneys' fees and costs.

50. Pursuant to §260.10 of the WPCL plaintiff is entitled to liquidated damages.

WHEREFORE, plaintiff, Connie Titchenell, for herself and those similarly situated, hereby demands judgment in her favor and against defendants, Apria Healthcare Group, Inc., Norman C. Payson and Daniel E. Greenleaf for compensatory damages, liquidated damages, reasonable attorneys' fees and costs and such other further relief as this Court may deem just and appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues for which a right to jury trial exists.

Respectfully submitted,

LAMM RUBENSTONE LLC

Date: 1/25/11


By: 
Frank Schwartz, Esquire
Attorneys for Plaintiff
3600 Horizon Blvd., Suite 200
Trevose, PA 19053
215-638-9330

EXHIBIT “A”



APRIA HEALTHCARE

Performance Appraisal – Introductory Period

Name: Connie Titchenell **Location:** Sharon Hill, PA - CC#6423
Social Security Number: _____ **Supervisor:** John Dorais
Position: Customer Service Specialist **Date of Hire:** 05/06/1996 **Appraisal Date:** 01/14/2008

I. Employee Rating

	Expectations			Comments
	Exceeds	Meets	Below	
Communication: Communicates effectively both verbally and in writing with others inside and outside the organization; selects appropriate means of communication; questions to seek clarification and understanding; maintains confidentiality; listens actively to others; conveys appropriate information to others.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Connie contributes on a daily basis.
Customer Service: Takes the initiative to meet internal and external customer needs in a timely and courteous manner; maintains a high level of customer satisfaction.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Works well w/pt.'s & referrals to meet their requests and needs.
Dependability/Reliability: Consider record of attendance and punctuality; meets work schedules and fulfills job responsibilities and commitments; follows tasks through to completion and ensures success; accepts responsibility for actions and decisions; adapts quickly to job or organizational changes.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Meets expectations.
Interpersonal/Teamwork: Establishes and maintains good working relationships; shows respect and concern for the feelings of others; interfaces effectively with all levels of the organization; focuses on situations rather than personalities in relating to others; works cooperatively within a group; accepts constructive feedback.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Works well w/all parts of the SH team.
Job/Business/Organizational Knowledge: Understands applicable company and department policies/procedures, as well as relevant industry requirements and standards; keeps current on developments that impact job responsibilities; considers impact of actions on other parts of the organization; ensures that organizational and departmental standards are integrated into results.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Will improve over time w/more training.
Problem Solving: Displays good judgement; takes the initiative rather than waiting to be told; makes practical suggestions; learns from past experiences and uses those insights to handle new situations effectively; defines problems logically and develops appropriate solutions; uses creative approaches.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Always seeks answers to issues that arise each day.
Productivity: Produces appropriate volume of acceptable work under normal conditions and achieves desired results.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Meets expectations.
Time Management: Completes appropriate amount of work in a timely fashion without jeopardizing quality; uses time effectively to consistently accomplish objectives and meet deadlines; organizes workload for requirement of job; sets priorities and discriminates between important and unimportant matters; anticipates needs/problems; maintains attention to detail.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Meets expectations.

II. Appraisal Overview

What are the employee's strengths?	Personable with patients & referrals. Connie also is positive & knowledgeable in specific areas, especially Enteral.
What are the employee's development needs?	Connie needs enhancement on ACIS, C/S skill in relation to CCM & coverage knowledge (Dx, equip.)
What training is being provided to help the employee develop?	On-line training needs to be established with Connie's schedule. Will seek area courses being held to help strengthen her skill sets.

III. Objectives for Annual Performance Appraisal

(Must be completed for exempt employees; optional for non-exempt employees)

Weight (%)	Objective	Target Date
33 %	ACIS on-line training. This will develop Connie's strengths & make her stronger in CS.	03/31/2008
33 %	Equip/Dx training on-line. Again, will enhance Connie's skills.	03/31/2008
33 %	CCM on-line training. This will give Connie the knowledge to be compliant on Apria requirements.	03/31/2008

IV. Employee Comments

V. Signatures

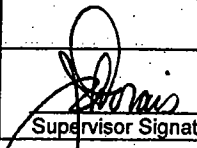
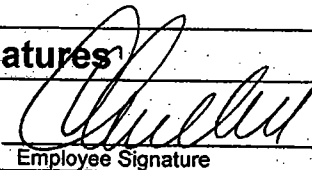
	<u>1/14/08</u>		<u>1/14/08</u>
Supervisor Signature	Date	Employee Signature	Date

EXHIBIT “B”



APRIA HEALTHCARE

Job Related Skills - Non-Exempt

Rate the employee on each job related skill and add comments to support each rating. Comments should be provided to support the rating in each category, and are particularly important to support ratings other than Achieves Expectation (3) and Achieves Expectation + (3.5).

Ratings must be numeric - see rating tab above for the rating descriptions.

(80% of Total Score)

RATING	DESCRIPTION
U	(1) Unsatisfactory
U+	(1.5) Unsatisfactory +
N	(2) Needs Improvement
N+	(2.5) Needs Improvement +
A	(3) Achieves Expectations
A+	(3.5) Achieves Expectations +
E	(4) Exceeds Expectations
E+	(4.5) Exceeds Expectations +
O	(5) Outstanding

Job Knowledge: The employee demonstrates a clear understanding of job and is proficient in all required skills. The employee also completely understands company policy and procedure and is within regulatory compliance.

John Dorais:

Rating: 2 - N

Please enter comments below:

Connie still struggles with Intakes - have suggested more on-line training to enhance skills but she has not followed this advice.

Productivity/Quantity of Work: The employee demonstrates speed and timeliness in daily activities and projects as assigned. Regular production volume is consistent and employee demonstrates good time management skills.

John Dorais:

Rating: 2 - N

Please enter comments below:

Has shown improvement over the past 30 days but still does not meet expectations on a daily basis.

Quality of Work: The employee demonstrates a high degree of accuracy and due diligence. Work area is neat and clutter free. Employee adheres to current company policy and procedure while demonstrating a high degree of attention to detail.

John Dorais:



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Rating: 2 - N

Please enter comments below:

Connie still makes errors where a person of her experience should overcome. needs to enroll in more training to raise skill set.

Customer Service: Employee demonstrates a drive to exceed current customer service expectations and desires to achieve complete customer satisfaction. Employee conveys a professional attitude towards our clients with a customer-first approach.

John Dorais:

Rating: 3.5 - A+

Please enter comments below:

Always pleasant with patients and referrals. Has best interest of patient in mind all the time.

Interpersonal Communication/Teamwork: The employee establishes and maintains good rapport and working relationship with fellow colleagues. The employee demonstrates a sense of cooperation and contributes accordingly to team efforts.

John Dorais:

Rating: 3 - A

Please enter comments below:

Connie always lets her concerns, questions or issues be known to address in a timely manner.

Dependability and Reliability: The employee demonstrates a high degree of consistency and reliability when meeting work schedules; absenteeism is minimal even during unusual or emergency situations. The employee adapts quickly to organizational and/or job changes.

John Dorais:

Rating: 3 - A

Please enter comments below:

Has improved tardiness - was issue, but has overcome.



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Overall Summary of Performance

Enter the overall summary of the employees performance.

Enter the overall summary of the employees performance.

John Dorais:

Comments:

Connie has a positive interaction with our patients and referrals, but still lacks in her Intake productivity. She has shown improvement in the past 30 days , but needs to be consistent and become the "go to" person in the department for questions and solutions. Increasing her knowledge through use of the Apria Training network will enhance those skills.
